



515623

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

State of Minnesota, by the Minnesota
Pollution Control Agency,

Court File No. 670767

Plaintiff,

and

City of St. Louis Park,

REQUEST FOR PRODUCTION
OF DOCUMENTS

Intervenor-Plaintiff,

vs.

Reilly Tar & Chemical Corporation,

Defendant.

TO: Thomas E. Reiersgord, Esq., Yngve & Reiersgord, 6250 Wayzata
Boulevard, Minneapolis, Minnesota 55416, counsel for Reilly
Tar & Chemical Corporation

Pursuant to Rule 34 of the Minnesota Rules of Civil Procedure, plaintiff State of Minnesota, by the Minnesota Pollution Control Agency ("State"), and intervenor City of St. Louis Park ("City") request defendant Reilly Tar & Chemical Corporation to produce all materials described below for examination and copying at the offices of Reilly Tar & Chemical Corporation, 1615 Merchants Bank Building, Indianapolis, Indiana 46204, on or before March 29, 1979.

DEFINITIONS

The following definitions are to be considered as applicable to all requests described below:

A. "Defendant" means Reilly Tar & Chemical Corporation ("Reilly Tar"), any predecessor in interest to Reilly Tar (including, but not limited to, Republic Creosoting Company), and any subsidiary of Reilly Tar or its predecessors which subsidiary has engaged in the distillation of coal tar or application of creosote to timber in St. Louis Park, Minnesota.

B. The "Site" means all land which has at any time been owned by defendant in the City of St. Louis Park, Minnesota, and

001806

all land which has at any time been used by defendant in its former operations in St. Louis Park, Minnesota.

C. "Document" means any writing, record, or other graphic matter of any type or description, including agreements, correspondence, letters, telegrams, office communications, memoranda, reports, records, minutes of meetings, instructions, specifications, notes, notebooks, scrapbooks, diaries, appointment books, sketches, blueprints, photographs, photocopies, charts, curves, descriptions, invoices, purchase orders, bills of lading, motion pictures, video tapes, phono-recordings, tape recordings, published or unpublished speeches or articles, publications, transcripts of telephone conversations, drawings, maps, graphs, any retrievable data (whether encarded, taped, or coded electrostatically, electromagnetically, or otherwise), and any other data compilations from which information can be obtained (translated, if necessary, by the defendant through detection devices into reasonably usable form), in defendant's possession, custody, or control or in the custody or control of any of defendant's employees, attorneys, or consultants, wherever located, however produced or reproduced, including any identical or nonidentical copy, whether a draft or a final version, and without any limitation as to time of preparation.

D. "Person" or "persons" means any individual, firm, partnership, association, corporation, or other legal or commercial entity.

E. "Meeting" means any coincidence of presence of persons, whether by chance or prearranged, including but not limited to a formal or informal gathering, luncheon, dinner, social or business occasion, or any other group situation of two or more persons.

F. "Communication" means all modes of conveying meaning or information, such as but not limited to, telephone, telegraph, written or spoken language between two or more persons.

REQUEST

All documents which relate to:

1. The physical description or depiction of the Site including any buildings, equipment, or facilities, or modifications thereof, which have at any time been located on the Site.
2. The geology of the area of the Site or its vicinity.
3. The existence, location, description, and/or quality of the water in any wells which are or have been located on the Site or its vicinity, including but not limited to any information on wells:
 - (a) Which have been used for disposal of coal tar derivatives by defendant or others;
 - (b) Which have received coal tar derivative substances as a result of a spill or other accident;
 - (c) Which have been abandoned, sealed, or sought to have been sealed or otherwise modified in any way;
 - (d) Which have been contaminated by coal tar or coal tar derivative substances.
4. Information on the soil, surface water, and/or ground water at the Site or in its vicinity, including but not limited to:
 - (a) The degree and extent of contamination of soil or ground water by coal tar or coal tar derivative substances which has at any time existed at or in the vicinity of the Site;
 - (b) Scientific or laboratory analyses of soil borings or water samples involving the measurement of coal tar or coal tar derivative substances in soil or ground water at or in the vicinity of the Site;
 - (c) Scientific or laboratory analyses of soil borings involving the measurement of coal tar or coal tar derivative substances in soil or ground water under circumstances so far removed from any industrial or other discrete source of such

substances that any detected substances might be considered to represent "background" levels for such substances:

(d) Physical samples of soil or ground water obtained from the Site or its vicinity;

(e) The quality of ground water at or in the vicinity of the Site;

(f) Bioassays or other laboratory analyses of any type concerning the quality or toxicity of ground or surface waters in the vicinity of the Site;

(g) The presence of carcinogens in the underground waters of the City.

5. Correspondence, meetings, or communications between any persons concerning:

(a) The contamination of soil, surface water, or ground water at or in the vicinity of the Site;

(b) The claims of the parties in this action.

6. Methods and techniques for disposal of coal tar or coal tar derivative wastes.

7. The operating techniques employed by the defendant in handling raw materials, finished products, and wastes at or in the vicinity of the Site, including but not limited to:

(a) The use of creosote oil or any coal tar derivative substances at or in the vicinity of the Site for any purpose, including, but not limited to, the treating of timber products and the controlling of weed growth;

(b) The storage by defendant of any coal tar or coal tar derivative substances at or in the vicinity of the Site;

(c) Safeguards used by defendant to prevent the escape or leakage of any coal tar or coal tar derivative substances to soil, surface waters, or ground water at or in the vicinity of the Site;

(d) The design, location, and operation of any pollution control device or other device used by defendant in an effort to

control and/or treat coal tar or coal tar derivative substances prior to the release of such substances to the soil, surface waters, or ground water at or in the vicinity of the Site;

(e) The volume of wastes treated by pollution control or other treatment devices and the volume of effluent and solid materials discharged from such devices or otherwise released to the environment during any portion of the period of defendant's operations in Minnesota.

8. Any discharges or releases to the environment of coal tar or coal tar derivatives at or in the vicinity of the Site, including but not limited to:

(a) Discharges or releases to the environment of coal tar or coal tar derivative substances incidental to defendant's usual operations at the Site;

(b) Breaks, leaks, and/or freeze-ups of defendant's coal tar and coal tar derivative storage tanks or conveyance pipes at the Site, or any instances involving the accidental release of coal tar or coal tar derivative substances to the soil, surface waters, or ground water;

(c) Any steps taken by defendant to prevent or control the discharge or other release to the environment of coal tar or coal tar derivative substances;

(d) Any steps taken by defendant to notify any State agency of the discharge or other release to the environment of coal tar or coal tar derivative substances;

(e) Any steps taken by defendant to clean up the discharge or other release to the environment of coal tar or coal tar derivative substances.

9. Remedial measures which may be undertaken to remove coal tar or coal tar derivative substance contamination from soil and/or from ground water.

10. Analysis of coal tar or coal tar derivative substances used or handled in defendant's operations, including but not

limited to:

- (a) The chemical components of such substances;
- (b) The solubility in water of such substances or their chemical components;
- (c) Scientific methods or techniques which have been or may be used for the purpose of identifying the chemical components of coal tar or coal tar derivatives.

11. The health effects (established or alleged) on human beings, plants, or animals of coal tar, coal tar derivatives, or any substances found in coal tar or coal tar derivatives, including but not limited to:

- (a) Health effects on or related to employees or former employees of defendant;
- (b) Health effects on or related to persons employed or formerly employed at any other facility, wherever located and by whomever operated, which distills coal tar into creosote oil and/or applies creosote oil to timber products;
- (c) Communications with physicians concerning the health of persons employed or formerly employed at any facility, wherever located and by whomever operated, which distills coal tar into creosote oil and/or applies creosote oil to timber products.

12. The health of former employees of defendant at the Site or at any other of defendant's plants which distills coal tar into creosote oil and/or applies creosote oil to timber products.

13. Defendant's production at the Site (stated in volumes of raw materials consumed, volumes of distillation products produced, quantities of timber treated, or any other unit of production measurement) during each year (or any other recordkeeping period) of defendant's operations.

14. Work performed by any consultant, other than an attorney, retained by defendant in connection with:

- (a) The storage, disposal, or retrieval from the environment of coal tar or coal tar derivative substances involved

in defendant's operations in Minnesota;

(b) The lawsuit by the State and the City against the defendant.

15. Defendant's application for, failure to apply for, or reasons for not applying for disposal system permits, liquid storage permits, or any other permit associated with its operations in Minnesota.

16. The organizational structure of defendant's operations in Minnesota.

17. The record-keeping and/or record-destruction policies of the defendant.

18. The name, residence, and/or former duties with defendant of any person who was at any time engaged in the handling of coal tar or coal tar derivative substances while employed by the defendant in Minnesota.

19. For each facility operated by defendant outside of Minnesota which is or was formerly engaged in the refining of coal tar or treatment of timber with coal tar derivative substances:

(a) The identity, location, and nature of operations at the facility;

(b) Any governmental permits which have been or were obtained in connection with the operation of the facility;

(c) The existence of any lawsuit or workmans' compensation claim, pending or completed, against defendant in any jurisdiction which relates in any way to the health or environmental impacts of its operation of the facility;

(d) The hiring or retaining of any consultant, other than an attorney, for the purpose of protecting employees or the environment from adverse impacts associated with the handling or disposing of coal tar and coal tar derivatives.

20. The defendant's sale of the Site to the City and/or the negotiations leading to that sale.

21. The defendant's exchange of dismissals with prejudice with the City.

001812

22. The Hold Harmless Agreement between the City and the defendant and/or the negotiations leading to that agreement.

23. The defendant's termination of operations in Minnesota.

24. The defendant's procurement of a certificate of withdrawal of authorization to transact business within the State of Minnesota, on or about November 19, 1973.

25. The value of the Site and all improvements thereon during 1972 or 1973.

26. Any insurance policy which may afford coverage to defendant in connection with the State's amended complaint and/or the City's complaint in intervention.

27. Any statements, whether written or oral, previously made by any person concerning the subject matter of the claims and counterclaims in this action.

28. The identity, residence, and place of employment of persons having knowledge of the claims and counterclaims in this action.

29. Communications between the defendant and the State or the City, during the years 1967 through the present, including:

(a) All documents prepared by or on behalf of defendant and directed to the Minnesota Pollution Control Agency or the Minnesota Department of Health;

(b) All documents prepared by or on behalf of defendant and directed to the City;

(c) All documents of the Minnesota Department of Health, the Minnesota Pollution Control Agency, and the City received by defendant.

30. The defendant's allegations:

(a) In paragraph IV of defendant's answer to the original complaint, that the defendant had demonstrated good faith and speedy compliance with all ordinances, laws, and administrative requirements of the City and the State;

(b) In paragraphs VII and VIII.B of defendant's answer to the original complaint, that the State failed to provide ade-

001813

quate administrative notice to the defendant prior to commencing this action in 1970.

(c) In paragraph VIII.B of defendant's answer to the original complaint, that impurities in water in the vicinity of the Site originated in waters running off from land owned by the State;

(d) In paragraph XII of defendant's answer to the original complaint and in paragraph II of defendant's original counterclaim against the City, that the State and/or the City were negligent in unreasonably and carelessly discharging collected surface waters onto the defendant's property, with resultant flooding of the defendant's "pollution control device" and with resultant injury to the defendant;

(e) In paragraph III of defendant's original counterclaim against the City, that the defendant was forced to expend extra money for the operation of its business as a result of surface water drainage problems caused by the City;

(f) In paragraph V of defendant's original counterclaim against the City, that the City could have constructed drainage in an alternative manner to avoid flooding of the defendant's property;

(g) In paragraph VIII of defendant's answer to the original complaint and in paragraph XX of defendant's answer to the City's complaint in intervention, that the City and/or the State had unclean hands, engaged in bad faith conduct, and/or possessed an illegal motive in instituting this action in 1970;

(h) In paragraph VII.C of defendant's answer to the State's amended complaint, that "the settlement by agreement and action of the parties in 1970-73 constituted a full adjudication and a binding contract by settlement of all matters between the parties;"

(i) In paragraph XVI of defendant's answer to the State's amended complaint, that the defendant has been unfairly

prejudiced by the passage of time prior to the amendment of the complaint by the State;

(j) In paragraph XII of defendant's answer to the City's complaint in intervention, that defendant "expended hundred [sic] of thousands of dollars in demolition of the structures on the premises, and removing certain pollutants and undesirable material;"

(k) In paragraph XIV of defendant's answer to the City's complaint in intervention, that the defendant relied on the matters alleged in paragraphs X, XI, XII, and XIII thereof, in dismissing with prejudice its counterclaim against the City:

(l) In paragraph XV of defendant's answer to the City's complaint in intervention that, prior to the 1970 lawsuit, disputes had arisen with the State and the City regarding "underground waters" and that "the settlement of April 14, 1972, was intended to deal with both surface water and underground water impurity;"

(m) In paragraph XV of defendant's answer to the City's complaint in intervention that the federal government "sought to prevent the City from buying the property because of the known impurities in the soil;"

(n) In paragraphs XVIII and XIX of defendant's answer to the City's complaint in intervention that the lawsuit original arose at the initiative of the City, following a "secret meeting" as more fully alleged therein, and in a campaign by the City to force a sale of the land by defendant to the City;

(o) In paragraph XXV of defendant's answer to the City's complaint in intervention that the City is not a proper party plaintiff;

(p) In paragraph IV of defendant's counterclaim against the City that the Housing and Redevelopment Authority of St. Louis Park ("HRA") is the alter ego of the City;

(q) In paragraph VI of defendant's counterclaim against the City that the HRA "is indebted to Reilly for a portion of the unpaid purchase price for which Reilly asserts a vendor's lien on the premises;"

001815

(r) In paragraph XIII of defendant's counterclaim against the City that the City "has committed trespass, negligence and other unlawful acts by . . . performing improper excavations on or near Reilly's property;"

(s) In paragraph XIII of defendant's counterclaim against the City that the City "has committed trespass, negligence and other unlawful acts by unlawfully and unreasonably causing storm waters to be disposed of on Reilly's property;"

(t) In paragraph XVI of defendant's counterclaim against the City that "the original lawsuit in 1970 was the product of an unlawful conspiracy between officers and attorneys of the City . . . and the State."

31. Any evidence supporting the defendant's denial of the fact that:

(a) The defendant "brought upon its land and stored coal tar, the products of coal tar distillation including creosote, and coal tar wastes, all of which are substances not naturally present with the land," as stated in paragraph V of the City's complaint in intervention;

(b) "At the time of the previous action there was no known damage to underground waters as a result of Reilly Tar's conduct," as stated in paragraph XIII of the City's complaint in intervention;

(c) At the time of the purchase of defendant's property by the City, neither the City, the Minnesota Department of Health, nor the Minnesota Pollution Control Agency were aware of possible carcinogens in the underground waters because of defendant's operations, as stated in paragraph XVI of the City's complaint in intervention;

(d) At the time of the execution of the Hold Harmless Agreement, "neither the City, nor the Minnesota Department of Health, nor the PCA were aware of the existence of possible carcinogens in the underground waters as a result of Reilly Tar's creosoting operations," as stated in paragraph XVIII of the City's complaint in intervention.

32. Any evidence which is relevant to or which defendant contends is in support of any of the allegations set out in the defendant's original answer and counterclaim, answer to the State's amended complaint, answer and counterclaim to the City's complaint in intervention, and third party complaint.

If any document covered by this request is withheld from production, the defendant is requested to identify each and every such document by title or subject heading, date, author, addressee, and any persons copied, the grounds for withholding the document, and the custody and location thereof.

WARREN SPANNAUS
Attorney General
State of Minnesota

RICHARD B. ALLYN
Solicitor General

STEPHEN SHAKMAN
Special Assistant
Attorney General

By John-Mark Stensvaag
JOHN-MARK STENSVAAG
Special Assistant
Attorney General

1935 West County Road B-2
Roseville, Minnesota 55113
Telephone: (612) 296-7342

Attorneys for Plaintiff State of
Minnesota, by the Minnesota
Pollution Control Agency

POPHAM, HAIK, SCHNOBRICH, KAUFMAN
& DOTY, Ltd.

By _____
WAYNE G. POPHAM

and _____
ALLEN HINDERAKER

4344 IDS Center
Minneapolis, Minnesota 55402
Telephone: (612) 335-9331

Attorneys for Intervenor-Plaintiff
/Third Party Defendant City of St.
Louis Park

Dated: February 23, 1979

001817